

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| In re: | : | |
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| BERNARD L. MADOFF INVESTMENT | : | Adv. Proc. No. 08-01789 (SMB) |
| SECURITIES LLC, | : | SIPA LIQUIDATION |
| | : | (Substantively Consolidated) |
| Debtor. | : | |
| ----- | : | |
| PERTAINS TO THE FOLLOWING CASE: | : | |
| | : | |
| IRVING H. PICARD, Trustee for the Liquidation | : | |
| of Bernard L. Madoff Investment Securities LLC, | : | Adv. Proc. No. 09-1182 (SMB) |
| | : | |
| Plaintiff, | : | |
| -v- | : | |
| | : | |
| J. EZRA MERKIN, GABRIEL CAPITAL, L.P., | : | |
| ARIEL FUND LTD., ASCOT PARTNERS, L.P., | : | |
| ASCOT FUND LTD., GABRIEL CAPITAL | : | |
| CORPORATION, | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

**DECLARATION OF NEIL A. STEINER IN SUPPORT
OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

I, Neil A. Steiner, declare as follows:

1. I am a member of the law firm of Dechert LLP, counsel to Defendants J. Ezra Merkin and Gabriel Capital Corporation.
2. I make this Declaration to put before the Court certain documents related to Defendants' Motions for Summary Judgment.
3. The Merkin Defendants did not file customer claims or any other claims in this proceeding.
4. Attached to this Declaration as Exhibit 1 is a copy of an excerpt from the deposition transcript of Lisa M. Collura dated June 18, 2015.

5. Attached to this Declaration as Exhibit 2 is a copy of the expert report by Lisa M. Collura dated March 20, 2015.

6. Attached to this Declaration as Exhibit 3 is a copy of an excerpt from the deposition transcript of Bruce G. Dubinsky dated April 27, 2015.

7. Attached to this Declaration as Exhibit 4 is a copy of the expert report by Bruce G. Dubinsky dated August 20, 2013.

8. Attached to this Declaration as Exhibit 5 is a copy of an excerpt from the deposition transcript of Matthew B. Greenblatt dated August 17, 2015.

9. Attached to this Declaration as Exhibit 6 is a copy of the expert report by Matthew B. Greenblatt dated March 20, 2015.

10. Attached to this Declaration as Exhibit 7 is a copy of an excerpt from the deposition transcript of Amy B. Hirsch dated June 16, 2015.

11. Attached to this Declaration as Exhibit 8 is a copy of the expert report by Paul K. Meyer dated May 15, 2015.

12. Attached to this Declaration as Exhibit 9 is a copy of an excerpt from the deposition transcript of Steve Pomerantz dated July 8, 2015.

(a) Attached to this Declaration as Exhibit 9(a) is a copy of the rebuttal expert report by Steve Pomerantz dated May 15, 2015.

13. Attached to this Declaration as Exhibit 10 is a copy of an excerpt from the deposition transcript of Jeffrey M. Weingarten dated July 15, 2015.

14. Attached to this Declaration as Exhibit 11 is a copy of the expert report by Jeffrey M. Weingarten dated March 19, 2015.

15. Attached to this Declaration as Exhibit 12 is a copy of the rebuttal expert report of Jeffrey M. Weingarten dated May 14, 2015.

16. Attached to this Declaration as Exhibit 13 is a copy of the undated Subscription Agreement for Ascot Partners, L.P.

17. Attached to this Declaration as Exhibit 14 is a copy of the undated Subscription Documents for Non-U.S. Investors for Ascot Fund Limited.

18. Attached to this Declaration as Exhibit 15 is a copy of the Confidential Offering Memorandum of Ascot Partners, L.P., dated October 2006.

19. Attached to this Declaration as Exhibit 16 is a copy of the Confidential Offering Memorandum Relating to Class B Participating Shares of Ariel Fund Limited dated March 2006.

20. Attached to this Declaration as Exhibit 17 is a copy of the Confidential Offering Memorandum Relating to Class B Participating Shares of Ascot Fund Limited dated October 2006.

21. Attached to this Declaration as Exhibit 18 is a copy of Randall Smith's article "Wall Street Mystery Features a Big Board Rival" published in the *Wall Street Journal* on December 16, 1992.

22. Attached to this Declaration as Exhibit 19 is a copy of Gary Slutsker's article "If You Can't Beat 'Em . . ." published in *Forbes* on January 6, 1992.

23. Attached to this Declaration as Exhibit 20 is a copy of Richard L. Stern's article "Living Off the Spread" published in *Forbes* on July 10, 1989.

24. Attached to this Declaration as Exhibit 21 is a copy of Michael Ocran's article "Madoff tops charts; skeptics ask how" published in *MAR/Hedge* in May 2001.

25. Attached to this Declaration as Exhibit 22 is a copy of the article “3 Firms Plan to Develop New System for Trading” published in *The New York Times* on June 8, 1999.

26. Attached to this Declaration as Exhibit 23 is a copy of Joseph Kahn’s article “4 Leading Securities Firms Join Forces to Back Primex” published in *The New York Times* on September 14, 1999.

27. Attached to this Declaration as Exhibit 24 is a copy of Binyamin Appelbaum’s article “Madoff Case ‘Failures’ Put SEC in Spotlight” published in *The Washington Post* on December 19, 2008.

28. Attached to this Declaration as Exhibit 25 is a copy of Erin E. Arvedlund’s article “Don’t Ask, Don’t Tell” published in *Barrons* on May 6, 2001.

29. Attached to this Declaration as Exhibit 26 is a copy of Craig Torres’ article “Big Board Accelerated Off-Hours Plan Due to Fear of Competition from Rivals,” published in the *Wall Street Journal* on June 15, 1990.

30. Attached to this Declaration as Exhibit 27 is a copy of David A. Vise’s article “Stock Exchanges Get a Shot at New Foe,” published in the *International Herald Tribune* on April 15, 1993.

31. Attached to this Declaration as Exhibit 28 is a copy of Jeffrey Taylor’s article “A Fairer Nasdaq? SEC Approves Its New Rules,” published in the *Wall Street Journal* on August 29, 1996.

32. Attached to this Declaration as Exhibit 29 is a copy of Greg Ip’s article “Firms Create System as Rival To Big Board,” published in the *Wall Street Journal* on June 8, 1999.

33. Attached to this Declaration as Exhibit 30 is a copy of Greg Ip's article "NYSE Scraps Limit on Member Trades In Other Venues, but Seeks an SEC Rule," published in the *Wall Street Journal* on December 3, 1999.

34. Attached to this Declaration as Exhibit 31 is a copy of undated published photos published entitled "NYSE chairman Grasso, securities dealer Madoff give CEO lectures."

35. Attached to this Declaration as Exhibit 32 is a copy of a photo from the Associated Press depicting a May 13, 1993 appearance by Richard Grasso and Bernard Madoff before the House subcommittee on Telecommunications and Finance.

36. Attached to this Declaration as Exhibit 33 is are copies of the "Messages from the SIPA Trustee's Chief Counsel, David J. Sheehan" dated May 18, 2012 and November 7, 2012.

37. Attached to this Declaration as Exhibit 34 is a copy of the U.S. Securities and Exchange Commission Office of Investigations' report entitled "Investigation of Failure of the SEC to Uncover Bernard Madoff's Ponzi Scheme" ("OIG Report") dated August 31, 2009.

38. Attached to this Declaration as Exhibit 35 is a copy of the transcript from Frank DiPascali's plea hearing dated August 11, 2009.

39. Attached to this Declaration as Exhibit 36 is a copy of the transcript from Eric Lipkin's plea hearing dated June 6, 2011.

40. Attached to this Declaration as Exhibit 37 is a copy of the November 2002 Ascot Partners, LP Trading Authorization Directive.

41. Attached to this Declaration as Exhibit 38 is a copy of the November 2002 Gabriel Capital, LP Trading Authorization Directive.

42. Attached to this Declaration as Exhibit 39 is a copy of J. Ezra Merkin's handwritten notes entitled "B.L. Madoff" dated May 23, 1995.

43. Attached to this Declaration as Exhibit 40 is a copy of J. Ezra Merkin's handwritten notes on a call with Madoff dated June 2001.

44. Attached to this Declaration as Exhibit 41 is a copy of J. Ezra Merkin's handwritten notes entitled "Bernard L. Madoff" dated February 20, 2003.

45. Attached to this Declaration as Exhibit 42 is a copy of J. Ezra Merkin's handwritten notes on a call with Madoff dated June 2005.

46. Attached to this Declaration as Exhibit 43 is a copy of undated handwritten notes on a call with Madoff.

47. Attached to this Declaration as Exhibit 44 is a copy of J. Ezra Merkin's handwritten notes entitled "Long tk with B.L. Madoff, fourth quarter revision" dated November 2006.

48. Attached to this Declaration as Exhibit 45 is a copy of handwritten notes discussing a "[f]ourth quarter visit" dated November 2007.

49. Attached to this Declaration as Exhibit 46 is a copy of J. Ezra Merkin's handwritten notes on a call with Madoff dated April 2008.

50. Attached to this Declaration as Exhibit 47 is a copy of J. Ezra Merkin's handwritten notes on a call with Madoff dated June 11, 2008.

51. Attached to this Declaration as Exhibit 48 is a copy of notes of a call between Bernard Madoff and J. Ezra Merkin dated May 1, 2000.

52. Attached to this Declaration as Exhibit 49 is a copy of notes of a call between Bernard Madoff and J. Ezra Merkin dated January 14, 2002.

53. Attached to this Declaration as Exhibit 50 is a copy of a memorandum from BDO to Michael Autera regarding "Open items-Ascot Partners, LP" dated February 3, 2004.

54. Attached to this Declaration as Exhibit 51 is a copy of a letter from Michael Autera to Frank DiPascali dated January 22, 1996.

55. Attached to this Declaration as Exhibit 52 is a copy of a letter from Michael Autera to Frank DiPascali dated February 15, 1999.

56. Attached to this Declaration as Exhibit 53 is a copy of a letter from Michael Autera to Frank DiPascali dated February 7, 2000.

57. Attached to this Declaration as Exhibit 54 is a copy of a letter from Michael Autera to Frank DiPascali dated January 14, 2005.

58. Attached to this Declaration as Exhibit 55 is a copy of a letter from Michael Autera to Frank DiPascali dated January 12, 2006.

59. Attached to this Declaration as Exhibit 56 is a copy of an email from George Duch to Michael Achillarre regarding "Confirms mailed in 2006" dated October 30, 2007.

60. Attached to this Declaration as Exhibit 57 is a copy of an email from J. Ezra Merkin to Naomi Ferro regarding "Odds and Ends" dated February 9, 2003.

61. Attached to this Declaration as Exhibit 58 is a copy of a letter from Michael Autera to Frank DiPascali dated January 2, 2007.

62. Attached to this Declaration as Exhibit 59 is a copy of a letter from Michael Autera to Frank DiPascali dated January 2, 2008.

63. Attached to this Declaration as Exhibit 60 is a copy of the Statement of Financial Condition of Bernard L. Madoff Investment Securities, LLC dated October 31, 2003.

64. Attached to this Declaration as Exhibit 61 is a copy of the report on Bernard L. Madoff Investment Securities, LLC dated October 31, 2003.

65. Attached to this Declaration as Exhibit 62 is a copy of the calendar belonging to J. Ezra Merkin spanning May 1996 through December 2008.

66. Attached to this Declaration as Exhibit 63 is a copy of an email from J. Ezra Merkin to Patrick Erne regarding “RE: 21 August 2007 letter from the Harvard Management Company” dated September 7, 2007.

67. Attached to this Declaration as Exhibit 64 is a copy of an email from J. Ezra Merkin to Patrick Erne regarding “RE: Meeting Request” dated October 3, 2007.

68. Attached to this Declaration as Exhibit 65 is a copy of an email from Michael Matlin to J. Ezra Merkin regarding “RE: Visit to Mr. Madoff” dated October 9, 2007.

69. Attached to this Declaration as Exhibit 66 is a copy of an email from Patrick Erne to J. Ezra Merkin regarding “Follow up” dated October 29, 2007.

70. Attached to this Declaration as Exhibit 67 is a copy of an email from A. Green on behalf of yeshil@bluewin.ch to J. Ezra Merkin regarding “Bernie Madoff – Correction” dated March 10, 2008.

71. Attached to this Declaration as Exhibit 68 is a copy of an email from J. Ezra Merkin to A. Green regarding “RE: be such” dated March 27, 2008.

72. Attached to this Declaration as Exhibit 69 is a copy of an email from Roman Igolnikov to J. Ezra Merkin regarding “Meeting with Madoff” dated December 17, 2003.

73. Attached to this Declaration as Exhibit 70 is a copy of an email from J. Ezra Merkin to Michael Autera forwarding an email from Roman Igolnikov to J. Ezra Merkin regarding “Ariel/Amber and Ascot” dated March 13, 2004.

74. Attached to this Declaration as Exhibit 71 is a copy of an email from Mike Autera to J. Ezra Merkin regarding “FW: Contact Information” dated May 29, 2003.

75. Attached to this Declaration as Exhibit 72 is a copy of an email from Mike Autera to Seiichiro Takahashi regarding “Follow up” dated June 17, 2004.

76. Attached to this Declaration as Exhibit 73 is a copy of a screenshot of the “About BDO” page on BDO’s website taken October 6, 2015, available at <https://www.bdo.com/about>.

77. Attached to this Declaration as Exhibit 74 is a copy of John Pakaluk’s post “Hedge Fund Auditor Market Share,” published by Audit Analytics on May 14, 2014.

78. Attached to this Declaration as Exhibit 75 is a copy of the Form ADV Uniform Application for Investment Adviser Registration for Bernard L. Madoff Investment Securities LLC dated August 25, 2006.

79. Attached to this Declaration as Exhibit 76 is a copy of the Form ADV Uniform Application for Investment Adviser Registration for Bernard L. Madoff Investment Securities LLC dated January 7, 2008.

80. Attached to this Declaration as Exhibit 77 is a copy of the Ascot Fund Ltd. Investor Capital Accounts Chart, Bates Numbered GCC-P0878185.

81. Attached to this Declaration as Exhibit 78 is a copy of the Ascot Partners, L.P. Investor Capital Accounts Chart, Bates Numbered GCC-P0882913.

82. Attached to this Declaration as Exhibit 79 is a copy of an excerpt from the Ascot Partners, L.P. Investor Capital Accounts Chart, Bates Numbered GCC-P0878213.

83. Attached to this Declaration as Exhibit 80 is a copy of the Defendants J. Ezra Merkin and Gabriel Capital Corporation’s Supplemental Responses to Plaintiff’s Second Set of Interrogatories and Requests for Admissions in Accordance with Decision #3 dated August 30, 2013.

84. Attached to this Declaration as Exhibit 81 is a copy of the transcript of the hearing before Judge Stuart M. Bernstein dated August 18, 2015.

85. Attached to this Declaration as Exhibit 82 is a copy of the Ascot Partners Customer Claim dated March 3, 2009.

86. Attached to this Declaration as Exhibit 83 is a copy of an excerpt from the deposition transcript of Jerome Balsam dated October 25, 2011.

87. Attached to this Declaration as Exhibit 84 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin dated February 24-25, 2015.

88. Attached to this Declaration as Exhibit 85 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin *In the Matter of Madoff Charities Investigation* by the Office of the Attorney General of the State of New York dated January 30, 2009.

89. Attached to this Declaration as Exhibit 86 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin, *State of New York v. J. Ezra Merkin et. al*, No. 450879/2009 (N.Y. Sup. Ct.) dated March 4, 2010.

90. Attached to this Declaration as Exhibit 87 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin, *State of New York v. Ascot Partners, LP*, No. 450879/2009 (N.Y. Sup. Ct.) dated July 1, 2010.

91. Attached to this Declaration as Exhibit 88 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin, *State of New York v. Ascot Partners, LP*, No. 450879/2009 (N.Y. Sup. Ct.) dated July 1, 2010.

92. Attached to this Declaration as Exhibit 89 is a copy of an excerpt from the deposition transcript of J. Ezra Merkin, *Straus v. Merkin*, Arb. No. 13 148 Y 01800 10 dated June 21, 2011.

93. Attached to this Declaration as Exhibit 90 is a copy of an excerpt from the deposition transcript of Michael J. Achilarré dated August 9, 2011.

94. Attached to this Declaration as Exhibit 91 is a copy of an excerpt from the deposition transcript of Michael E. Autera, Jr., dated October 19, 2011.

95. Attached to this Declaration as Exhibit 92 is a copy of an excerpt from the deposition transcript of Robert Castro dated October 10, 2012.

96. Attached to this Declaration as Exhibit 93 is a copy of an excerpt from the deposition transcript of Noreen Harrington dated October 1, 2013

97. Attached to this Declaration as Exhibit 94 is a copy of an excerpt from the deposition transcript of Daniel Hess dated October 11, 2012.

98. Attached to this Declaration as Exhibit 95 is a copy of an excerpt from the deposition transcript of Joel Ehrenkranz dated March 20, 2014.

99. Attached to this Declaration as Exhibit 96 is a copy of an excerpt from the deposition transcript of Andrew Gordon dated August 16, 2011.

100. Attached to this Declaration as Exhibit 97 is a copy of an excerpt from the deposition transcript of Michael Mahagan dated November 22, 2013.

101. Attached to this Declaration as Exhibit 98 is a copy of an excerpt from the deposition transcript of Michael Matlin dated November 21, 2013.

102. Attached to this Declaration as Exhibit 99 is a copy of an excerpt from the deposition transcript of Jack Mayer dated October 11, 2011.

103. Attached to this Declaration as Exhibit 100 is a copy of an excerpt from the deposition transcript of Joshua Nash dated October 18, 2012.

104. Attached to this Declaration as Exhibit 101 is a copy of an excerpt from the deposition transcript of Robert Rosenkranz dated October 4, 2012.

105. Attached to this Declaration as Exhibit 102 is a copy of an excerpt from the deposition transcript of Don M. Seymour dated January 13, 2015.

106. Attached to this Declaration as Exhibit 103 is a copy of an excerpt from the deposition transcript of David K. Sherman dated August 30, 2011.

107. Attached to this Declaration as Exhibit 104 is a copy of an excerpt from the deposition transcript of Fred Sloan dated October 16, 2012.

108. Attached to this Declaration as Exhibit 105 is a copy of an excerpt from the deposition transcript of John L. Steffens dated October 9, 2012.

109. Attached to this Declaration as Exhibit 106 is a copy of an excerpt from the deposition transcript of Victor Teicher dated October 29, 2013.

110. Attached to this Declaration as Exhibit 107 is a copy of an excerpt from the deposition transcript of Victor Teicher, *New York University v. Ariel Fund Ltd.*, No. 08603803/2008 (N.Y. Sup. Ct.), dated February 9, 2009.

111. Attached to this Declaration as Exhibit 108 is a copy of an excerpt from the deposition transcript of Ed Thorp dated May 22, 2012.

112. Attached to this Declaration as Exhibit 109 is a copy of an excerpt from the deposition transcript of Irina Gershengoren, *In the Matter of Madoff Charities Investigation* dated May 18, 2009.

113. Attached to this Declaration as Exhibit 110 is a copy of the Bernard L. Madoff Investment Securities, LLC Independent Auditors' Report dated October 31, 2006, Bates numbered BDO_S_0003891.

Dated: New York, New York
October 7, 2015

/s/Neil A. Steiner

Neil A. Steiner